IN THE HIGH COURT OF DELHI AT NEW DELHI

FAO No.120/2003

Judgment reserved on: 7th November, 2007

Judgment delivered on: 20.12.2007

Smt. Vidya ..... Appellant

Through: Ms.Saroj Bakshi, Advocate.

versus

D.T.C. & Anr. ..... Respondents

Through: Mr.Jyotindra Kumar, Advocate.

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

1. Whether the Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to Reporter or not? Yes
3. Whether the judgment should be reported Yes

in the Digest?

KAILASH GAMBHIR, J.

By way of the present appeal, the appellant seeks enhancement in compensation over and above the amount already awarded by the Tribunal in favour of the appellant vide order dated 18.10.2002.

Factual scenario of the case in nutshell is that the present appellant received serious injuries including multiple fractures on her leg due to the accident involving bus bearing registration No. DBP-6242 of respondent No.1. According to the case set up by the appellant in her claim petition, she along with baby Priyanka, her small baby of 2 years age, were travelling in a three-wheeler scooter bearing registration No.DHR-4551 in a most careful manner and at a low speed on the left side of the road near Azad Market Chowk and Railway Bridge when

the DTC bus bearing registration No. DBP-6242 being driven by one Shri Mehmood Khan, respondent No.2 herein, suddenly appeared from the opposite side due to which the said bus collided with the scooter. The said DTC bus was being driven by the driver of the offending vehicle in a most rash and negligent manner and at a very high speed. Due to the said accident, the appellant had received serious injuries including multiple fractures in her leg due to which the appellant had suffered permanent disability.

I have heard learned counsel for the parties and have perused the records.

Ms. Saroj Bakshi, counsel for the appellant contended that the Tribunal has disallowed the interest on the compensation amount for a period of 7 years without their being any lapse or default on the part of the appellant. The appellant is also aggrieved on account of the fact that the Tribunal has not taken the correct

notional income of the appellant who was a housewife. The contention of counsel for the appellant is that at least the minimum wages applicable for semi-skilled workman should have been taken into consideration. The appellant is also aggrieved that the Tribunal has also erred in allowing a meager sum as payment towards all the medical expenses incurred by the parties towards her treatment. Even the disability of the appellant to the extent of 50% as proved by the appellant was not taken into consideration. Counsel for the appellant further contended that even the expenses incurred by the appellant for buying the shoes were not granted.

Per contra, Mr. Jyotindra Kumar, counsel appearing for the respondent refutes the contentions of counsel for the appellant. He submitted that already the Court has granted much more than the just compensation, therefore, any further enhancement of compensation would only be a bonanza for the appellant.

Counsel also contended that the issues in the present case before the Tribunal were framed on 15.01.1991 and first evidence of the petitioner was recorded on the same date and thereafter the husband of the appellant entered the witness box on 31.8.2000 after a gap of more than 9 years. Counsel for the respondent did not find fault with the findings of the Tribunal so far as medical expenses are concerned as the award towards medical expenses has been made on the basis of proofs furnished by the claimants.

I have heard learned counsel at bar and have perused the record.

I do not find force in the submission of the counsel for the appellant so far as the same is concerned regarding the Tribunal not taking into consideration the law laid down by the Apex Court in **Lata Wadhwa Vs. State of Bihar & Ors. (2001) 8 SCC 197** in its proper perspective. The Tribunal has correctly not applied

Rs.3,000/- as income of housewife as was done in **Lata Wadhwa's case (Supra)**, as the same was done in the facts and circumstances of that case. In that case, the housewife belonged to higher strata of the society, but the Tribunal had taken the notional income of the appellant at Rs.800/- per month towards the income of housewife discharging her household duties. The accident in the present case had occurred on 5.9.89 and the nature of the job of a household lady is akin to a skilled workman, therefore, taking the wages payable for a skilled workman as on the date of the accident as per the Minimum Wages Act, same were Rs.1000/- per month, therefore, the said wages would be appropriate for considering the income of a housewife who became disabled due to the occurrence of the said accident.

The age of the appellant was 36 years on the date of the accident, therefore, as per the Second Schedule of the Motor Vehicles Act, the appropriate

multiplier would be 16 and thus the multiplier of 16 would be applicable instead of 12 as has been applied by the Tribunal.

As regards the second contention of the counsel for the appellant that a meager amount towards the medical expenses has been allowed by the Tribunal, I do not find any force in the argument of counsel for the appellant. The compensation towards the medical expenses cannot be claimed in vacuum and for whatever medical expenses the amount as claimed, necessary proof has to be furnished by the appellant. The relevant para of **Lata Wadhwa's case (Supra)** is reproduced as under:

> "In examining the question of damages for personal injury, it is axiomatic that pecuniary and non-pecuniary heads of damages are required to be taken into account. In case of pecuniary damages, loss of earning or earning capacity, medical, hospital and nursing expenses, the loss of matrimonial prospects, if proved, are required to be considered. In the case of non-pecuniary losses, loss of expectation of life, loss of amenities or capacity for

> enjoying life, loss or impairment of physiological functions, impairment or loss of anatomical structures or body tissues, pain and suffering and mental suffering are to be considered. But for arriving at a particular figure on each of the aforesaid heads, the claimant is duty-bound to produce relevant materials, on the basis of which, a determination could be made, as to what would be the best compensation."

The medical bills to the extent of Rs.6,300/- were placed on record and proved by the appellant and the same have accordingly been awarded by the Tribunal. I do not find any infirmity in the finding of the Tribunal, as far as the medical expenses are concerned.

The appellant is also aggrieved with the finding of the Tribunal considering the permanent disability of the petitioner to the extent of 25%, whereas, disability certificate certifying permanent disability to the extent of 50% was placed on record and proved by the appellant. The perusal of the impugned award shows that the disability to the extent of 25% was taken for the whole

body. The permanent disability certificate placed on record by the appellant shows that the appellant had suffered 50% disability of the lower limb of her leg and there is nothing wrong or illegal if the said disability of 50% has been considered to be 25% as far as the whole body is concerned.

I, therefore, do not feel inclined to interfere with the said finding of the Tribunal.

The last contention of the counsel for the appellant is that the Tribunal has illegally denied the interest on the compensation amount for a period of seven years. The claim petition was filed by the appellant on 5.1.90 and the evidence of the appellant was recorded for the first time on 15.1.91 and thereafter only on 31.8.2000 the remaining evidence was produced by the appellant. The Tribunal has taken a serious note of this negligence on the part of the appellant in not taking the effective steps to pursue her case. It is not only shocking but disturbing

as well that compensation cases get delayed not only on account of contesting respondents but due to the carelessness, negligence and procrastination on the part of claimants themselves. If the claimants themselves are responsible for delay of their own cases then the insurer or other contesting respondents cannot be made liable to be burdened to pay the interest for the lapses and inaction of such claimants.

I, therefore, do not find any infirmity or illegality in the finding of the Tribunal denying the interest for a period of seven years when the matter was delayed by the appellant herself by not coming forward to produce the evidence for a period of nine years. The contention of the counsel for the appellant on this score is rejected.

As regards the plea of the appellant for the enhancement of compensation under other heads is concerned, I do not find any justification being given by the appellant for claiming such enhancement.

In the light of the aforesaid discussion, following directions are passed in the present appeal.

1. The notional income of the appellant housewife shall be taken at Rs.1000/- per month in place of Rs.800/- per month as determined by the Tribunal.

2. Multiplier of 16 shall be applicable as per the Second Schedule of the Motor Vehicles Act in place of multiplier of 12 as applied by the Tribunal in the impugned award.

With the aforesaid directions, the matter is remanded back to the Tribunal to carry out the said directions and pass appropriate orders quantifying the amount of compensation to which the appellant is entitled to.

With these directions, the present appeal stands disposed of.

December 20, 2007 **(Kailash Gambhir)**

mg **Judge**